



*"To enrich lives through effective and caring service"*



**Santos H. Kreimann**  
Director

**Kerry Silverstrom**  
Chief Deputy

March 30, 2010

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

**ADOPTED**

BOARD OF SUPERVISORS  
COUNTY OF LOS ANGELES

# 37 of MAR 30 2010

*Sachi A. Hamai*  
SACHI A. HAMAI  
EXECUTIVE OFFICER

Dear Supervisors:

**APPROVAL OF AMENDMENT NO. 4 TO LEASE NO. 12157  
PARCEL 94R (PARKING LOT FOR MARINA PROFESSIONAL BUILDING) –  
MARINA DEL REY  
(SUPERVISORIAL DISTRICT FOUR)  
(4 VOTES)**

**SUBJECT**

This Board letter requests approval of a Marina del Rey lease amendment for Parcel 94R (parking lot for Marina Professional Building) that maintains all existing percentage rental rates, adjusts the rental security deposit and the square foot rental, and updates the insurance provisions.

**IT IS RECOMMENDED THAT YOUR BOARD:**

1. Find that the proposed Amendment No. 4 to Lease No. 12157 is categorically exempt under the California Environmental Quality Act pursuant to class 1(r) of the County's Environmental Document Reporting Procedures and Guidelines.
2. Approve and authorize the Chair of the Board to sign the attached Amendment No. 4 to Lease No. 12157, maintaining all existing percentage rent categories, adjusting the square foot rental and the security deposit, and updating the insurance provisions for a ten-year period ending May 31, 2018.

**PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

Marina del Rey ground leases generally provide for the periodic review of leasehold rents and liability insurance coverage to ensure that the rental rates payable to the County are maintained at current fair market levels and that the amount of general liability insurance is adequate to protect the County's interests. County rents are typically computed as the fixed minimum rent plus the difference between the fixed minimum rent and the negotiated percentage rent of the lessee's gross receipts from uses of the leasehold. If the fixed minimum rent is greater than the negotiated percentage rent of the lessee's gross receipts, then only the minimum rent is collected.

The Parcel 94R lease (parking lot for Marina Professional Building) requires adjustment of rents on June 1, 1998 and every tenth anniversary thereafter. Based on comparable rates at other Marina del Rey leaseholds, the Department of Beaches and Harbors has negotiated with the lessee to keep all percentage rent categories unchanged as the current rates are at fair market level.

However, Amendment No. 4 provides for the adjustment of the minimum rent on the first day of June of every third year from the 2008 Rental Adjustment Date to an amount equal to 75% of the average annual rent payable by the lessee to the County over the prior three years. The current adjustment increases the annual minimum rent from 10,986 to \$18,456. The proposed Amendment No. 4 further provides that the rental security deposit will be maintained at an amount equal to one-fourth of the annual square foot rental of the leasehold premises.

Additionally, Amendment No. 4 incorporates changes to the indemnity clause, insurance requirements, and miscellaneous insurance provisions to conform to the Chief Executive Office's Risk Management Branch's new and more stringent requirements.

### **Implementation of Strategic Plan Goals**

The recommended action will keep County percentage categories at Parcel 94R comparable to other Marina del Rey parcels and incorporates new insurance provisions, in fulfillment of Strategic Plan Goal No. 1, "Operational Effectiveness", Strategy 1, "Fiscal Sustainability".

### **FISCAL IMPACT/FINANCING**

All percentage rent categories will remain at their current rates. Amendment No. 4 results in an increase in minimum rent from \$10,986 to \$18,456 for the three-year period commencing June 1, 1998. However, as the percentage rent for this leasehold routinely exceed the minimum rent, there will be no increase in the overall rent as a result of this action.

#### **Operating Budget Impact**

The recommended action will not result in a change in the overall rent revenue due the County. Increasing the minimum rent will result in the proportionate decrease in the percentage rent collection.

### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

Commonly known as the parking lot for the Marina Professional Building, Parcel 94R is improved with a parking lot and an attendant booth. The leasehold currently occupies 39,971 square feet of

land in Marina del Rey. It does not have a water area. The 60-year ground lease between the County and lessee was executed in 1967.

Amendment No. 4 has been approved as to form by County Counsel. At its meeting of January 13, 2010, the Small Craft Harbor Commission unanimously endorsed the Director of the Department of Beaches and Harbors' recommendation that your Board approve and execute the Amendment.

#### **ENVIRONMENTAL DOCUMENTATION**

Proposed Amendment No. 4 is categorically exempt under the provisions of the California Environmental Quality Act pursuant to class 1(r) of the County's Environmental Document Reporting Procedures and Guidelines.

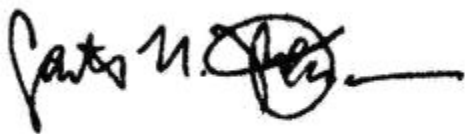
#### **IMPACT ON CURRENT SERVICES (OR PROJECTS)**

There will be no impact on current services from your Board's approval of Amendment No. 4.

#### **CONCLUSION**

Please have the Chair of the Board sign all three copies of Amendment No. 4 and have the Executive Officer of the Board return two executed copies, as well as a copy of the adopted Board letter, to the Department of Beaches and Harbors.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Santos H. Kreimann", followed by a horizontal line.

SANTOS H. KREIMANN  
Director

SHK:KS:GJ.PW:skn

Enclosures

c: Chief Executive Officer  
County Counsel  
Executive Officer, Board of Supervisors

AMENDMENT NO. 4 TO LEASE NO. 12157

Parcel No. 94R--Marina del Rey

THIS AMENDMENT TO LEASE is made and entered into this 30<sup>TH</sup>  
day of MARCH, 2010 (the "Effective Date"),

**BY AND BETWEEN**

**COUNTY OF LOS ANGELES,**  
hereinafter referred to as "County,"

**AND**

**DEL REY PROFESSIONAL  
ASSOCIATION, a general  
partnership, hereinafter referred to  
as "Lessee."**

WITNESSETH:

WHEREAS, County and Lessee entered into Lease No. 12157 under the terms of which County leased to Lessee that certain real property located in the Marina del Rey Small Craft Harbor, County of Los Angeles, State of California, now commonly known as Parcel 94R, which leasehold premises (the "Premises") are more particularly described in Exhibit "A" attached to and incorporated in said lease, as amended (the lease and all amendments are collectively hereafter referred to as the "Lease"); and

WHEREAS, Section 15 of said Lease provides that as of June 1, 1998, and as of June 1st of every tenth (10th) year thereafter (each such date is hereafter referred to as a "Rental Adjustment Date"), the rates for square foot rental and all categories of percentage rentals and liability insurance requirements (collectively, the "Adjusted Rentals") shall be readjusted by Lessee and County in accordance with the standards established in said Section 15;

WHEREAS, the parties have agreed to adjust the security deposit provided in Section 7 (Rental Security Deposit); and

WHEREAS, Section 15 further provides that Adjusted Rentals may be determined by Lessee and County by mutual agreement at any time; and

WHEREAS, the parties hereto have determined that there shall be no adjustment to any category of percentage rental for the ten (10) year period commencing on June 1, 2008 (the "2008 Rental Adjustment Date"); and

WHEREAS, the parties have agreed to adjust the square foot rental for the ten (10) year period commencing on the 2008 Rental Adjustment Date; and

WHEREAS, the parties have reached agreement with respect to the amount of liability insurance required to be maintained by Lessee for the ten (10) year period commencing on the 2008 Rental Adjustment Date and other insurance revisions.

NOW, THEREFORE, in consideration of the mutual agreements, covenants and restrictions contained herein, the parties, and each of them, agree as follows:

1. **Rental Security Deposit.** The first paragraph of Section 7 (RENTAL SECURITY DEPOSIT) of said Lease is hereby amended to read as follows:

"The Lessee shall deliver to and maintain with County a security deposit (the "Security Deposit") in an amount equal to one-fourth (1/4) of the annual square foot rental for the leasehold premises, as this rental may change over the term of this lease due to the periodic changes that may be made in the rent pursuant to Section 15 of the lease. This sum shall be maintained by the County as a security deposit to cover delinquent rent and any other financial obligations of the Lessee under this lease, and shall be so applied at the discretion of the County."

2. **Square Foot Rental.** Commencing as of the 2008 Rental Adjustment Date, the fourth paragraph of Section 12 (SQUARE FOOT AND HOLDING RENTALS) of the Lease is amended to read as follows:

"Effective June 1, 2008 and every three years thereafter, the annual square foot rental for the whole of the Premises shall be readjusted to equal seventy-

five percent (75%) of the annual average of all rents payable by the Lessee under Section 13 of the Lease for the immediately preceding three-year period, provided that no adjustment shall result in a decrease of the square foot rental."

3. **Retroactive Rent.** Lessee shall pay to County, within ten (10) days following the Effective Date, for the period between the 2008 Rental Adjustment Date and the actual date of payment (the "Retroactive Period"), the difference between (i) the minimum annual rent payable by Lessee under the rental rate in effect prior to the effectiveness of this Lease Amendment from the 2008 Rental Adjustment Date to the Effective Date and (ii) the minimum annual rent payable from the 2008 Rental Adjustment Date to the Effective Date based upon the rental adjustment set forth in this Lease Amendment ("Retroactive Payment").

4. **Insurance Provisions.** Commencing as of the Effective Date, Sections 25 through 28 of said Lease are deleted in their entirety and the following substituted therefor:

"25. INDEMNITY CLAUSE.

Lessee shall indemnify, defend and hold the County, its Special Districts, elected and appointed officers, employees and agents harmless from and against all liability, including, but not limited to, demands, claims, actions, fees, costs and expenses (including attorney and expert witness fees), arising from or connected with Lessee, its members, agents and invitees, operations and use of the Premises.

26. INSURANCE REQUIREMENTS.

Without limiting Lessee's indemnification of County and during the term of this Lease, Lessee shall provide and maintain the following insurance specified in this Lease. Such insurance shall be primary to and not contributing with any other insurance or self-insurance programs maintained by County, and such coverage shall be provided and maintained at Lessee's own expense.

- A. General Liability insurance (written on ISO policy form CG00 01 or its equivalent) and endorsed to name County as an additional insured, with limits of not less than the following:

General Aggregate:	\$2 million
Products/Completed Operations Aggregate:	\$2 million
Personal and Advertising Injury:	\$1 million
Each Occurrence:	\$1 million
Fire Legal Liability:	\$10,000

- B. Automobile Liability insurance (written on ISO form CA 00 01 or its equivalent) with a limit of liability of not less than \$1 million for each accident and providing coverage for all "owned", "hired" and "non-owned" vehicles, or coverage for "any auto". If and when valet parking services are provided at the Premises, Lessee shall provide Garagekeeper's Legal Liability coverage (written on ISO form CA 99 37 or its equivalent) with limits of not less than \$3 million for this location.

- C. Workers' Compensation and Employers' Liability insurance providing Workers' Compensation benefits, as required by the Labor Code of the State of California and for which Lessee is responsible. If Lessee's employees will be engaged in maritime employment, coverage shall provide Workers' Compensation benefits as required by the U.S. Longshore and Harbor Workers' Compensation Act, Jones Act or any other federal law for which Lessee is responsible.

In all cases, the above insurance shall also include Employers' Liability coverage with limits of not less than the following:

Each Accident:	\$1 million
Disease - policy limit:	\$1 million
Disease - each employee:	\$1 million

- D. Commercial Property Insurance. Such insurance:

- (1) Shall cover damage to Premises, including improvements and betterments, from perils covered by the Causes-of-Loss Special Form (ISO form CP 10 30 or its equivalent), including earthquake (if Lessee deems it reasonable), Ordinance or Law Coverage and Business Interruption equal to two (2) years' annual rent;
- (2) Shall be written for the full replacement value of the property, with a deductible no greater than \$250,000 or 5% of the property value, whichever is less; and
- (3) Upon the occurrence of any loss, the proceeds of such insurance shall be held by County in trust for the named insureds as their interests appear. In the event of such loss, Lessee shall be obligated to rebuild or replace the destroyed or damaged buildings, structures, equipment and improvements to the full satisfaction of the County. Said obligation to rebuild or replace is not dependent upon the existence of insurance. County shall reimburse Lessee for said rebuilding or replacement out of and to the full extent of the proceeds of said insurance as payments are required for said purposes. Any surplus proceeds after said rebuilding or replacement shall be distributed to the named insureds as their interests may appear.

27. MISCELLANEOUS INSURANCE PROVISIONS.

- A. Waiver of Subrogation: Lessee shall obtain appropriate endorsements upon all insurance policies, other than Workers' Compensation, waiving subrogation by the insurer(s) against County.
- B. Evidence of Insurance: Certificate(s) or other evidence of coverage satisfactory to County shall be delivered to County prior to the Effective Date. Such certificates or other evidence shall:
  - (1) Specifically identify this Lease.
  - (2) Clearly evidence all coverages required in this Lease.

- (3) Contain the express condition that insurer will use its best efforts to give written notice by mail to County at least thirty (30) days in advance of cancellation for all policies evidenced on the certificate of insurance.
  - (4) Identify any deductibles or self-insured retentions exceeding \$25,000.
- C. Review of Insurance Requirements: Throughout the term of this Lease and upon Notice to Lessee, County may review and adjust at any time the types and limits of insurance required under this Lease to a commercially reasonable level. Insurance is to be provided by insurers acceptable to the County with an A.M. Best rating of not less than A:VII, unless otherwise approved by County.
- D. Failure to Maintain Coverage: Failure by Lessee to maintain the required insurance, or to provide evidence of insurance coverage acceptable to County, shall constitute a material breach of this Lease. Alternatively, the County may purchase such required insurance coverage and, without further notice to the Lessee, may deduct any premium costs advanced by the County for such insurance from the Lessee's security deposit.
- E. Notification of Incidents, Claims, or Suits: Lessee shall report to County any accident or incident relating to services performed under this Lease which involves injury or property damage, which might reasonably be thought to result in the filing of a claim or lawsuit against Lessee and/or County. Such report shall be made in writing within 72 hours of Lessee's knowledge of such occurrence.
- F. Compensation for County Costs: In the event that Lessee fails to comply with any of the indemnification or insurance requirements of this Agreement, and such failure to comply results in any costs to County, Lessee shall pay full compensation for all reasonable costs incurred by County.

28. [INTENTIONALLY OMITTED.]"

5. **Miscellaneous.** Except as herein specifically amended, all terms, conditions and provisions of the Lease shall be and continue to remain in full force and effect and are unmodified, and each of the parties hereto reaffirms and reacknowledges its respective obligations under the Lease as amended hereby.

IN WITNESS WHEREOF, County has, by order of its Board of Supervisors, caused this Amendment to Lease to be subscribed by the Chair of said Board and attested by the Executive Officer thereof, and the Lessee, by its duly authorized representative, has executed the same.

Dated: MAR 30 2010, 2010

I hereby certify that pursuant to  
Section 25103 of the Government Code,  
delivery of this document has been made.

SACHI A. HAMAI  
Executive Officer  
Clerk of the Board of Supervisors

By: [Signature]

Deputy

ATTEST:

SACHI A. HAMAI  
Executive Officer-Clerk of the  
Board of Supervisors

By: [Signature]

Deputy

APPROVED AS TO FORM:  
ANDREA SHERIDAN  
County Counsel

By: [Signature]

Deputy

COUNTY OF LOS ANGELES

By: [Signature]

Chair, Board of Supervisors

LESSEE:

DEL REY PROFESSIONAL  
ASSOCIATION

By: [Signature]

Its: [Signature]

**ADOPTED**  
BOARD OF SUPERVISORS  
COUNTY OF LOS ANGELES

# 87 MAR 30 2010

[Signature]  
SACHI A. HAMAI  
EXECUTIVE OFFICER

# 37 OF MAR 30 2010

Legal Description

MARINA DEL REY  
LEASE PARCEL NO. 94R

EXHIBIT A

Those portions of Parcels 654, 686, 687 and 688, in the County of Los Angeles, State of California, as shown on Los Angeles County Assessor's Map No. 88, filed in Book 1, pages 53 to 70 inclusive, of Assessor's Maps, in the office of the Registrar-Recorder of said County, within the following described boundaries:

Beginning at the northwesterly terminus of the northeasterly boundary of said Parcel 688; thence South  $32^{\circ}36'06''$  East along said northeasterly boundary 20.46 feet to the northwesterly terminus of that certain 8050.17 foot radius curve in said northeasterly boundary; thence southeasterly along said certain curve 9.56 feet to a point, a radial of said certain curve to said point bears South  $57^{\circ}19'49''$  West; thence South  $48^{\circ}13'04''$  West 183.51 feet to a curve concentric with and 1.5 feet northeasterly, measured radially, from that certain 540 foot radius curve in the southwesterly boundary of said Parcel 688; thence northwesterly and westerly along said concentric curve 227.87 feet to a line parallel with and 1.5 feet northerly, measured at right angles, from the straight line in the southerly boundary of said Parcel 686; thence North  $77^{\circ}04'44''$  West along said parallel line 50.00 feet to the westerly line of the easterly 15.31 feet of said Parcel 654; thence North  $12^{\circ}52'16''$  East along said westerly line 123.50 feet to the northerly line of said last mentioned parcel; thence South  $77^{\circ}07'44''$  East along the northerly lines of said Parcels 654, 686, 687 and 688 a distance of 355.95 feet to the point of beginning.

Reserving and excepting unto the County of Los Angeles 10 foot rights of way for access, powerline and harbor utility purposes over those portions thereof designated on said map as easements to be reserved by said County for such purposes.

DESCRIPTION APPROVED  
July 11, 1979  
STEPHEN J. KOONCE  
County Engineer

By Agustin Adrian Deputy

